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Nicole H. Myers

Jane M. Ritter

200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

E-MAIL: OLLS.GA@STATE.CO.US

SENIOR ATTORNEY FOR ANNOTATIONS

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MEMORANDUM

TO: Committee on Legal Services

FROM: Brita Darling, Office of Legislative Legal Services

DATE: December 6, 2022

SUBJECT: Rules of the Administrator for the Uniform Consumer Credit Code and Commission on Consumer Credit, Department of Law, concerning the Colorado Student Loan Equity Act, 4 CCR 902-3 (LLS Docket No. 220123; SOS Tracking No. 2021-00741).¹

Summary of Problem Identified and Recommendation

Section 5-20-203 (2)(b), C.R.S., requires private education lenders to provide certain documents and information to the Administrator for the Uniform Consumer Credit Code and Commission on Consumer Credit (administrator) at the time of registration and at least once per year thereafter. But the administrator's Rule 5.A. exempts a private education lender that is refinancing a student education loan from providing the information required pursuant to section 5-20-203 (2)(b)(I), (2)(b)(III), and (2)(b)(IV), C.R.S. **Because Rule 5.A. conflicts with the statute, we recommend that Rule 5.A. of the rules of the Administrator for the Uniform Consumer Credit Code and Commission on Consumer Credit concerning the Colorado Student Loan Equity Act not be extended.**

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I)(A), C.R.S., the rules discussed in this memorandum will expire on May 15, 2023, unless the General Assembly acts by bill to postpone such expiration.

Analysis

The administrator's rule concerning registration requirements for private education lenders conflicts with statute and, therefore, should not be extended.

Pursuant to section 5-20-203 (1), C.R.S., on or after September 1, 2021, a private education lender is prohibited from offering or making a private education loan to a resident of Colorado without first registering with the administrator.² A "private education lender" is defined, in part, in section 5-20-202, C.R.S., as follows, and includes a lender "making or extending" private education loans:

5-20-202. Definitions. As used in this part 2, unless the context otherwise requires:

(6) (a) "Private education lender" or "lender" means:

(I) Any person engaged in the business of **making or extending** private education loans;

(II) A holder of a private education loan; or

(III) A creditor. **(Emphasis added)**

Pursuant to section 5-20-203 (2)(b), C.R.S., as part of the registration process for private education lenders, a private education lender shall annually provide certain documents and information to the administrator:

5-20-203. Registration of private education lenders - penalties - rules.

(2) A private education lender shall:

(b) Provide the administrator, at the time of registration and not less than once per year thereafter, as established by the administrator by rule, and at other times upon the administrator's request, with the following documents and information:

(I) A list of all schools at which the private education lender has provided private education loans to a private education loan borrower;

(II) The volume of private education loans made annually to private education loan borrowers;

(III) The volume of private education loans made annually at each school identified under subsection (2)(b)(I) of this section;

(IV) The default rate for private education loan borrowers obtaining private education loans from the private education lender, including the

² See § 5-20-203 (1), C.R.S.: "On or after September 1, 2021, a person shall not offer or make a private education loan to a resident of Colorado without first registering with the administrator as provided in this section."

default rate for private education loans made to private education loan borrowers at each school listed pursuant to subsection (2)(b)(I) of this section;

(V) A copy of each model promissory note, agreement, contract, or other instrument used by the private education lender during the previous year to substantiate that a private education loan has been extended to a private education loan borrower or that a private education loan borrower owes a debt to the lender; and

(VI) The name and address of the private education lender and any officer, director, partner, or owner of a controlling interest of the lender. **(Emphases added)**

Despite the statutory requirement for private education lenders to provide the documents and information specifically set forth in section 5-20-203 (2)(b), C.R.S., Rule 5.A. exempts private education lenders from providing the documents and information required in subsections (2)(b)(I), (2)(b)(III), and (2)(b)(IV) of the section:

4 CCR 902-3

Rule 5. Registration Documents and Information Due Date

The documents and information required for registration in section 5-20-203(2)(b), C.R.S. shall be provided to the Administrator with the registration fee and annually thereafter on or before September 1.

A. Private education lenders **are not required to provide** the information required in **section 5-20-203(2)(b)(I), (III)**, C.R.S., or the default rate for each school in **section 5-20-203(2)(b)(IV)**, C.R.S. for **refinanced** private education loans. **(Emphases added)**

The administrator has authority to adopt rules to implement article 20 of title 5, C.R.S.,³ and to adopt rules regarding registration procedures and fees pursuant to section 5-20-203 (2)(a), C.R.S.⁴ However, the administrator does not have statutory authority to adopt rules that conflict with statute by exempting private education lenders from providing statutorily required documents and information for a class of private education loans, specifically, **refinanced** private education loans.

³ See § 5-20-110 (5), C.R.S.: "The administrator shall adopt rules as necessary to implement this article 20."

⁴ See § 5-20-203 (2)(a), C.R.S.: "[A private education lender shall] [r]egister with the administrator pursuant to any registration procedures set forth by the administrator and pay the fee set by the administrator by rule ..."

Moreover, a refinanced private education loan is a "student education loan,"⁵ which is defined, in part, in section 5-20-103 (6)(a), C.R.S., as follows:

5-20-103. Definitions. As used in this article 20, unless the context otherwise requires:

(6) "Student education loan":

(a) Means a loan that is made, insured, or guaranteed under Title IV of the federal "Higher Education Act of 1965", 20 U.S.C. sec. 1070 et seq., as amended, or that is extended to a student loan borrower for the purpose of funding, in whole or in part, education expenses. **The term includes a loan that is extended in order to refinance or consolidate a student loan borrower's existing student education loans. (Emphasis added)**

Therefore, the requirement in section 5-20-203 (2)(b), C.R.S., for a private education lender to report on private education loans includes not only initial loans, but also loans extended in order to refinance or consolidate an existing student education loan since the definitions set forth in section 5-20-103 apply to all of article 20 of title 5, C.R.S., including part 2.

Finally, exempting private education lenders from providing the statutorily required documents and information for refinanced private education loans arguably conflicts with the legislative intent of part 2 of article 20 of title 5, C.R.S., which is to protect borrowers:

5-20-201. Scope of part - construction with other laws - legislative declaration. The general assembly finds, determines, and declares that this part 2 is enacted to address issues not fully addressed through the regulation of student loan servicers under part 1 of this article 20. **This part 2 is intended to complement, and should be construed in harmony with, part 1 of this article 20 to provide seamless and consistent protection to borrowers whenever possible. (Emphasis added)**

⁵ See § 5-20-202 (7)(a), C.R.S.: "Private education loan" means a student education loan that: ..."

Recommendation

We therefore recommend that Rule 5.A. of the rules of the Administrator for the Uniform Consumer Credit Code and Commission on Consumer Credit concerning the Colorado Student Loan Equity Act not be extended because Rule 5.A. conflicts with statute.

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